

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ANTHONY LEROY DAVIS,

Petitioner,

v.

CASE NO. 17-3087-SAC

DAN SCHNURR,

Respondent.

MEMORANDUM AND ORDER

This matter is a petition for habeas corpus filed by a prisoner in state custody. Following its screening of the petition, the court liberally construed it as a petition filed under 28 U.S.C. § 2241.

On June 6, 2017, the Court dismissed the matter without prejudice, and on July 25, 2017, the Court denied petitioner's motion to amend judgment, motion for new trial and to amend judgment, and motion to amend to conform to the evidence. Petitioner has filed a Notice of Appeal and a motion for leave to proceed on appeal in forma pauperis.

Because petitioner is a state prisoner, he must obtain a Certificate of Appealability (COA) to appeal the dismissal of this matter. *See Montez v. McKinna*, 208 F.3d 862, 869 (10th Cir. 2000) (holding that 28 U.S.C. § 2253(c)(1)(A) requires a state prisoner to obtain a COA whether proceeding under § 2241 or § 2254). To obtain a COA, a petitioner must make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). Where, as here, a petition is dismissed on procedural grounds, "a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial

of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The Court has considered the record and declines to issue a COA in this matter. The dismissal without prejudice allows petitioner to fully exhaust state court remedies before presenting his claims.

IT IS, THEREFORE, BY THE COURT ORDERED a Certificate of Appealability is denied.

IT IS FURTHER ORDERED petitioner's motion for leave to proceed on appeal in forma pauperis (Doc. #17) is granted.

IT IS SO ORDERED.

DATED: This 2d day of August, 2017, at Topeka, Kansas.

S/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge